

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

NEW RIVERSIDE CORPORATION d/b/a
MILWAUKEE RIVERSIDE THEATER

Employer

and

Case 30-RC-6083 (formerly 9-RC-17206)

MILWAUKEE THEATRICAL STAGE EMPLOYEES
LOCAL 18, OF THE INTERNATIONAL ALLIANCE
OF THEATRICAL STAGE EMPLOYEES,
MOVING PICTURE TECHNICIANS, ARTISTS
AND ALLIED CRAFTS OF THE UNITED STATES
AND ITS TERRITORIES AND CANADA, AFL-CIO

Petitioner

**SUPPLEMENTAL DECISION AND
CERTIFICATION OF REPRESENTATIVE**

Pursuant to a petition filed on January 20, 1999,¹ and a Decision and Direction of Election issued by the Regional Director for Region 9 on February 12, the ballots for a mail ballot election were tallied on March 15 among employees in the following unit:

All full-time and regular part-time stagehands employed by the Employer at its Milwaukee, Wisconsin facility; but excluding all office clerical employees, managerial employees, cleaning crew employees, concessionary employees, guards and supervisors as defined in the Act.

The results of the election, as set forth in the tally of ballots served on the parties on the day of the election, show that of approximately 30 eligible voters, 17 cast ballots for, and 2 cast ballots against, the Union. There were no challenged ballots to affect the results of the election.

On March 19, the Employer filed a timely objection, a copy of which was served on the Employer, and is attached as Appendix A.

¹ All dates refer to 1999.

DISCUSSION

The Employer contends that three eligible voters whose names appeared on the eligibility list, Patrick J. Harper, Douglas Purucker and Paul M. Purucker, informed a company representative that they did not receive a ballot from the National Labor Relations Board until March 16, the day following the tally of ballots. The Employer contends that, at minimum, three potential voters were disenfranchised from the election process by not being afforded an opportunity to participate. The Employer further contends that since only 19 of the 30 eligible voters cast a mail ballot, it may well be that a number of other employees also did not receive ballots on a timely basis and therefore the election should be invalidated.

Contrary to the Employer's assertions, the ballot for Paul M. Purucker was received by the Regional Office before the election, and on March 15, it was opened and counted. Further, Patrick J. Harper confirmed that he had received his mail ballot well before March 16, in sufficient time for him to mark his ballot and return it to be received by March 15, but because he was out of town working for another employer, he was unable to do so. The Employer has presented no evidence that Douglas Purucker did not timely receive his mail ballot. The Employer has presented no evidence that the 11 individuals who did not return their ballots by the tally time on March 15 were disenfranchised by any fault other than their own.

In *Lemco Construction, Inc.*, 283 NLRB 459 (1987), the Board held that election results would be certified where "all eligible voters have an adequate opportunity to participate in the election, notwithstanding low voter participation. . . where there is adequate notice and opportunity to vote and employees are not prevented from voting by the conduct of a party. .

Based on the foregoing, I overrule the Employer's Objection in its entirety and issue the following Certification of Representative:

CERTIFICATION OF REPRESENTATIVE²

IT IS CERTIFIED that a majority of the valid ballots has been cast for Milwaukee Theatrical Stage Employees Local 18, of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and its Territories and Canada, AFL-CIO and that Milwaukee Theatrical Stage Employees Local 18, of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and its Territories and Canada, AFL-CIO is the exclusive collective-bargaining representative of the employees in the following unit:

All full-time and regular part-time stagehands employed by the Employer at its Milwaukee, Wisconsin facility; but excluding all office clerical employees, managerial employees, cleaning crew employees, concessionary employees, guards and supervisors as defined in the Act.

Signed at Milwaukee, Wisconsin this 31st day of March 1999.

Irving E. Gottschalk, Acting Regional Director
National Labor Relations Board
Thirtieth Region
Henry S. Reuss Federal Plaza, Suite 700
310 West Wisconsin Avenue
Milwaukee, WI 53203

370 6375 3700
370 6375 7500

riversde.doc

²Under the provisions of Section 102.69 of the Board's Rules and Regulations, a request for review of this supplemental decision may be filed with the Board in Washington, DC. The request for review must be received by the Board by **April 14, 1999**. Under provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits which a party has timely submitted to the Regional Director in support of its objections or challenges, and which are not included in the Supplemental Decision, are not a part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Supplemental Decision shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.